IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.4921 of 2006
KIRAN SINHA W/O SRI ARUN KUMAR,
KORAWAN, HILSA, NALANDA
VERSUS

1. THE STATE OF BIHAR
2. THE SECRETARY, HOUSING DEPARTMENT, GOVT. OF BIHAR PATNA
3. THE DY. SECRETARY , HOUSING DEPARTMENT, BIHAR, PATNA
4. THE REGISTRAR, COOPERATIVE SOCIETIES, BIHAR
5. THE DY. REGISTRAR, COOPERATIVE SOCIETIES, BIHAR
6. THE JT. REGISTRAR, COOPERATIVE SOCIETIES, BIHAR
7. THE PEOPLE'S COOPERATIVE HOUSE CONSTRUCTION SOCIETY LIMITED, KANKARBAGH, PATNA THROUGH ITS HONORARY SECRETARY.
8. BRAJESHWARI SHARMA E-48, PEOPLE'S COOPERATIVE COLONY
9. ALOK SHEKHAR, G 42, PEOPLE'S COOPERATIVE COLONY, KANKARBAGH

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4 17.02.2010. Heard learned counsel for the parties.

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2. The petitioner prays for quashing order dated 13.3.2006, passed by the Secretary, Housing department, Bihar, Patna, respondent no.2 in Arbitration case no. 1 & 2 of 2005 communicated under memo no. 164 dated 23.3.2006, by Deputy Secretary, Housing department, Bihar, Patna respondent no. 3 as contained in annexure 18, as well as for quashing order dated 7.4.2003, passed by the Registrar, Cooperative Societies, Patna, respondent no. 4 in Case no. 124 of 2001 communicated under memo no. 99 dated 25.4.2003 by Deputy Registrar, Co-operative Societies, Bihar, Patna as contained in annexure 13.

3. Brief facts giving rise to the writ petition are as follows:-

4. The Governor of Bihar executed a lease deed dated 19.1.1968 in respect 1600 plots at Kankarbagh (falling under types, namely, A,B,C,D,E,F,G, J & K) in favour of the Peoples Co-operative Housing Construction Society Limited, Society, Kankarbagh, Patna (in short the Society). Earlier plottings were made vide sanctioned map dated 26.12.1966, prepared by the Superintending engineer, Rural Housing Cell, Bihar, Patna. The plots were divided in following four categories:-

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i) A type - 3 kathas- 40’ x 100’
ii) B type - 2 kathas- 35’ x 80’
iii) C type- 3 kathas- 30’ x 80’
iv) D type- 2 kathas- 40’ x 68’

5. Plot no. K 86 and K 87 are plots under B type, plot no. 88 onwards and plot no. 102 onwards are C type as is evident from the lay out map itself. Subsequently a revised outlay plan of Sector K was prepared by Executive engineer, Housing department, Govt. of Bihar which was communicated vide letter no. 286 dated 15.1.1971 to the respondent Secretary of the Society by which size of plot nos. 86,87,100 & 101 were enhanced and category of said

plot was changed to C type plot. However, the Bihar State Housing Board, Patna vide letter no. 1335 dated 25.7.2003 clarified that plot no. K 86 and K 87 are B type plots and its areas are 35' x 80'. Plot no. K 86 was allotted initially to Mrs. Nandini Rai in year 1982 who transferred the same to her niece Alok Shekhar vide sub lease dated 29.4.1997 and thereafter the latter transferred the same in favour of writ petitioner vide transfer deed dated 2.7.2004. The aforesaid transfer in the name of petitioner has been approved by the Housing Department vide its resolution dated 27.6.2004.

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6. It is further stated that Alok Shekhar filed a Case No. 320 of 1998 before the Registrar, Cooperative Societies, Govt. of Bihar pleading therein that the Society has charged for 4000 sqft (80' x 50'), whereas the actual available land was only to the tune of 2800 sq ft.(80' x 35'). The case was transferred before Joint Registrar, who vide order dated 24.9.2001 observed that area of plot no. K 86 (plot of petitioner) and plot no. K 87 (plot of respondent no.8) cannot be expanded and the additional amount which were collected from the allottees can be refunded. Against order of the Joint Registrar an appeal was filed by respondent no.8 bearing

Case no. 124/2001. The Registrar of the Society vide order dated 7.4.2003, annexure 14 communicated vide memo no. 99/RL-25.4.2003 set aside order dated 24.9.2001 and held that the Secretary, Housing Department, Govt. of Bihar is only competent authority to interpret, to decide the matters appertaining to enhancement of size of plots as provided in clause 15 of both the deeds of Plot no. K 87 and K 86. Registrar in his order further observed that the Society divided leased land into four types. Type A was 40 ft x 100 ft, type B was 35 ft x 80 ft and type C is 50 ft x 40 ft., type D was 60 ft x 40. He further observed that the Society made a mistake by transferring plot no. 86 as type C plot as it was not 50 ft. x 80 ft. in area.

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7. Thereafter one Shashank Shekhar filed an appeal before the Secretary, Housing Department, Govt. of Bihar which vide order dated 17.3.2004 held that Plot no. K 86 and K 87 are of B type measuring 35' x 80' and due to mistake it was allotted as C type. A direction was given that Society at its own cost will get an amended have the lease deed created in respect of K 86 and K 87 and would refund money for 1200 sq.ft. which did not exist. Copy of the order of the

Secretary, Housing Department is annexed as annexure 13.

8. Brajeshwar Sharma, respondent no.8 filed writ petition before this court against the impugned order dated 17.3.2004 communicated under memo no. 380 dated 20.5.2004. This court vide order dated 27.4.2005, passed in C.W.J.C.No. 7132 of 2004 observed that the Secretary, Housing Department would give personal hearing to the parties and then proceed to adjudicate the matter in accordance with law. A copy of order of this Court is annexed as annexure 15. Thereafter, the Secretary, Housing department drew the proceeding as Arbitration case no. 1 and 2 of 2005 and disposed it finally on 13.3.2006 in terms of the findings recorded therein.

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9. The case of petitioner's vendor Aloke Shekhar before the Secretary, Housing department was that due to mistake the Society has registered plot no. K1 86 and plot no. K1 87, as C-Type plot to the applicant and opp.party. In fact these plots are B type plots measuring 35 ft x 80 ft in place of 50 x 80 ft.

10. Counsel for private respondent no.8 has filed affidavit stating therein that instant writ petition is not

maintainable against order dated 13.3.2006, passed in Arbitration case by Secretary Housing Department, Govt. of Bihar. He submits that the remedy of petitioner was only by way of filing an application for setting aside arbitral award under section 34 of the Arbitration and Conciliation Act, 1996. Furthermore, factual aspect of an arbitral award cannot be looked into by the court under writ jurisdiction. Learned counsel relied upon a decision reported in 2009 SC.1366. He further submits that he was allotted plot falling in category C having measurement of 80' x 50'. He is in possession of the full area and the petitioner is indirectly trying to interfere with his possession. He submits that in any case petitioner should not be allowed to disturb his possession. He submits that plot of petitioner has got reduced on account of construction of road and passage of sewerage. On the other hand, contention of petitioner is that he is satisfied with even reduced size of 35ft x 80ft wrongly registered as 50ft x 80ft.

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11. Clause 15 of the aforesaid lease deed of plot no. K-86 contained in annexure 9 also stipulates that in case of any dispute between the parties, the matter shall be referred to the

arbitration of the Secretary to Government Housing Department acting as such, at the time of reference, and his decision and direction shall be final, conclusive and binding on both the parties. It has further been stated in the lease deed that any default thereof shall be deemed a breach of terms and conditions.

12. Petitioner submits that this writ petition is fully maintainable and in no case it would lie in the mouth of respondent no.8 to make such objection. He submits that respondent no.8 himself had came to this court against order passed by the Secretary of the Housing department dated 30.8.2004 contained in annexure- 14 which he himself terms as an arbitration proceeding. On remand by the court, the Secretary has disposed of the same by registering it as an arbitration case. He submits that he is entitled to move this Court, if he is aggrieved by such order being passed by the Secretary pursuant to remand order of this court.

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13. As issue of maintainability of writ petition has been raised, I would address this issue first.

14. It appears that against order of the Secretary, Housing Department contained in annexure 14, a writ was

filed by respondent no.8 in this Court in which direction was given to the Secretary, Housing Department to dispose of the same after giving personal hearing to the parties.

15. It appears that pursuant to writ filed by respondent no.8 bearing C.W.J.C.No. 7132/04, the case was remanded to the Secretary, Housing department, Govt. of Bihar. If any of the parties is aggrieved by such order on remand of this court then the aggrieved party would have a cause to move this court in the writ petition. The contention of the respondent no.8 that this court lacks jurisdiction would not hold ground when he has himself moved this Court against earlier order passed by the predecessor of the present Secretary, whose order is impugned.

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16. So far as claim of petitioner on merit is concerned, it would appear from the impugned order that the Housing department allowed some land to the Society through the lease deed having a Lay out plot no. 34 of 1966-67. Subsequently, the Housing Department came with a revised part layout plan no. 70 of 1970 of Sector K Lohia Nagar (Kankar Bagh) and communicated the same vide letter no. 286 dated 25.1.1971 to the Society. As per the Revised

part lay out plan no. 70/1970, the area of plot no. K1 86, K1-87 and its counter part K1-100 and K1-101 was increased and were categorized as C type plots, with a dimension of 80 ft x 50 ft (4000 sq. ft). Plot No. K1 87 with an area measuring 80 ft x 50 ft was allotted to respondent no.8 and Society executed a registered deed on 13.7.1981. Plot no.K1 86 was allotted to vendor of Alok Shekhar, namely, Mrs. Nandani Rai in the year 1982. On portion of this plot as well as Plot No. K1 100, a public road was constructed and some portion came under sewerage etc. A High Tension Electric line also passed through portion of the said Plots and thus area of both plots stood reduced. The above fact was admitted by the then Secretary of the Society in the show cause filed before the court of Jt.Registrar in Case No. 320/98.

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17. The Secretary held that the vendor of the petitioner filed case before the Co-operative court giving rise to this arbitration case, without showing sufficient cause for delay in filing the same. Both cases were held barred by limitation. However liberty has been given to the petitioner to either seek refund of the excess amount or to seek allotment of land at another place.

18. In backdrop of aforesaid discussions, I am of the view that no relief can be claimed by the petitioner against respondent no.8 in the instant writ petition and he has not specifically sought any relief against respondent no.8. The relief claimed by the petitioner would require appraisal of evidence and facts which could be well decided in a Civil suit. Thus no positive relief can be granted to the petitioner in this writ petition. Nevertheless it is upto petitioner to be satisfied or not with whatever remains of plot no. K 1-86.

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Shashi/NAFR. (Samarendra Pratap Singh,J.)